

1 Colloquy

2 MR. BAKER: I mean, how is that determined? Who
3 made that determination that this would be the fee that would
4 be associated with that particular process?

5 MS. NEWMAN: I think it developed over time. I
6 mean, I haven't been there since the beginning. When I
7 started working, the fees were already in place. So I don't
8 know the -- I cannot say. It's --

9 MR. BAKER: It's not the lender? It's Fidelity?

10 MS. NEWMAN: That is Fidelity's fee. That's our
11 fee. The lender has nothing to do with our fees.

12 MR. BAKER: Okay. And you all don't know how that
13 was determined?

14 MS. NEWMAN: Well, I'm not saying somebody doesn't
15 know.

16 MR. BAKER: No, no, no. You.

17 THE COURT: She's just saying she doesn't know.

18 MR. BAKER: Yeah, I'm just saying the people in
19 this courtroom.

20 MS. NEWMAN: And I know generally.

21 MR. CASH: And, frankly, at this point, Your Honor,
22 how we develop what we charge --

23 MS. NEWMAN: Right.

24 MR. CASH: -- I think is given beyond the scope.
25 And that gets into a lot of very proprietary information.

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2 THE COURT: Did I say to you that I wasn't so
3 pressed for the dollars.

4 MR. CASH: No, you did not.

5 THE COURT: I'm trying to understand --

6 MR. CASH: I was just letting you know.

7 THE COURT: -- whether it depends on whether use and
8 cost are related.

9 MS. NEWMAN: It's not a click charge if you know
10 what those are. I mean, there are click charges like Westlaw.
11 Every time you click on something --

12 THE COURT: Okay. And --

13 MS. NEWMAN: -- it's another twenty-five cents.
14 It's not like that.

15 THE COURT: And there's no difference in the various
16 functions -- you don't subscribe to certain functions and not
17 others and get a -- there's not a price differential so that
18 if you want to use the issues open feature --

19 MS. NEWMAN: No.

20 THE COURT: -- that's fine but what if you also want
21 to do an intercom, you want to do notes.

22 MS. NEWMAN: No.

23 THE COURT: I mean, it doesn't matter, you can
24 intercom till the --

25 MS. NEWMAN: You can send a thousand day if you feel

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2 like taking the time. No. Once you have your fee, you have
3 full and free use of the system. You can upload fifty
4 documents, you can upload two. There's not a document upload
5 charge. There's not an extra storage charge. It's one fee.

6 MR. BAKER: Was there an uptake charge? Meaning,
7 when the attorney user initially licenses this product from
8 Fidelity, is there a charge for that process?

9 MS. NEWMAN: No. There may -- when the company
10 started years and years ago, there may have been. But it's
11 web-based. So once they have access it's just there. You
12 just have to have internet.

13 MR. CONWAY: Is it in any way tied to the
14 attorneys' --

15 MS. NEWMAN: No.

16 MR. CONWAY: -- fees and the clients'?

17 MS. NEWMAN: No.

18 MR. CONWAY: It's tied to -- is the payment tied to
19 any fees that's charged?

20 MS. NEWMAN: No.

21 THE COURT: The --

22 MR. CONWAY: So if an attorney doesn't send bills to
23 the client then the fee is still due?

24 MR. CASH: Yes.

25 MS. NEWMAN: Yes. They get a bill every thirty

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2 days. If they're not entitled --

3 THE COURT: The attorneys for being on the system.

4 MS. NEWMAN: If they're not entitled to bill until
5 the close of the file --

6 THE COURT: So there the attorney on the system and
7 then every thirty days you determine how many processes they
8 have --

9 MS. NEWMAN: Yes, the system will generate.

10 THE COURT: It automatically calculates how many
11 processes it may come to multiple files.

12 MS. NEWMAN: Yes. And they get a bill. And it
13 details their bill.

14 THE COURT: And they get -- you know, just like you
15 get a Pacer -- it's like the Pacer --

16 MS. NEWMAN: Exactly.

17 THE COURT: -- service center sends out a bill every
18 month.

19 MS. NEWMAN: Yes. And if the attorney never gets
20 paid --

21 THE COURT: -- although that's based on usage.
22 You're saying yours isn't.

23 MS. NEWMAN: Right.

24 THE COURT: And if they -- some of the -- you've
25 referred to this escalation and contact matrix --

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2 MS. NEWMAN: Right. Escalation contact matrix,
3 correct.

4 THE COURT: And you don't have a problem? Somebody
5 can escalate and there's no record of that -- well, I guess
6 there's a record of everything but --

7 MS. NEWMAN: Right.

8 THE COURT: -- there's no economic consequence to
9 doing that?

10 MS. NEWMAN: Oh, goodness, no.

11 THE COURT: Okay.

12 MS. NEWMAN: No, that's provided.

13 THE COURT: Okay. Anybody have anything else for
14 our Lenders Servicing -- okay, good. Very good. Thank you.
15 This was very instructive. But I -- okay. Does anybody want
16 to take a short break before we --

17 MR. CONWAY: Your Honor, could we have a recess so
18 we can --

19 THE COURT: Oh, you can look at the documents.

20 MR. CONWAY: Yes.

21 THE COURT: Absolutely.

22 (Recess from 4:01 p.m. until 4:25 p.m.)

23 THE CLERK: All rise.

24 THE COURT: Okay.

25 MR. CONWAY: Yes.

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2 THE CLERK: Court's reconvened. You may be seated.

3 MR. CONWAY: May I instruct Mr. Udren to take a
4 seat?

5 THE COURT: Yes. We certainly -- this is the long
6 awaited --

7 MR. CONWAY: It is.

8 THE COURT: -- and hopefully not disappointing
9 testimony of Mr. Udren.

10 MR. CONWAY: Your Honor, before Mr. Udren is to be
11 sworn in --

12 THE COURT: Oh, wait. What happened with the
13 document?

14 MR. CONWAY: They are substantially identical with
15 the exception of the schedule which relate to fees.

16 THE COURT: Oh.

17 MR. CONWAY: So I -- we're prepared to proceed.

18 THE COURT: Good.

19 MR. CONWAY: Okay?

20 THE COURT: Thank you.

21 MR. CONWAY: But before we go further, one of the
22 documents that was asked to be given to us was the agreement
23 between HSBC and Fidelity. And the schedules were not
24 attached for whatever reason. One of the schedules, in
25 particular, Schedule A, basically defines the duties of

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2 Fidelity. It's the heart and soul of the agreement but I
3 never got it. And so I reserve that for another day but I
4 don't want to let this pass without the Court being aware that
5 I really -- in order to understand the complete agreement, I
6 need the heart and soul, the thing that says this is what
7 Fidelity does.

8 THE COURT: But it's not your agreement?

9 MR. CONWAY: It's not Mr. Udren's agreement.

10 THE COURT: It's the --

11 MR. BART: He has --

12 THE COURT: Yes.

13 MR. BART: -- all the copies that I'm aware of now
14 of the Udren Fidelity --

15 THE COURT: And since -- well, Mr. Eisenberg, I take
16 it will be addressing the problem that you just identified?
17 Okay. If you need to -- let's not assume it will be a problem
18 but I understand your reservation. Okay. May he be now be
19 sworn?

20 THE CLERK: Please raise your right hand and place
21 your left hand on the Bible.

22 WITNESS, MARK UDREN, SWORN

23 THE CLERK: Thank you. Please be seated. Please
24 state your name and spell it for the record.

25 THE WITNESS: Mark Udren, U-D-R-E-N.

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2 THE CLERK: And could you please state your address
3 for the record?

4 THE WITNESS: My address?

5 THE CLERK: Yes.

6 THE WITNESS: Office address --

7 THE CLERK: Yes.

8 THE WITNESS: -- is 111 Woodcrest Road, Cherry Hill,
9 New Jersey.

10 THE CLERK: Okay. Thank you.

11 DIRECT EXAMINATION

12 BY MR. BART:

13 Q. Good afternoon, Mr. Udren.

14 MR. BART: For the record, I'm Jonathan Bart,
15 Wilentz, Goldman & Spitzer on behalf of the Udren law firm.
16 As we have proceeded in this matter previously, I'm going to
17 get some background from Mr. Udren. And then leave it to the
18 trustee to ask whatever questions they may have concerning the
19 events at issue here.

20 Q. I take it, Mr. Udren, that you are an attorney at law,
21 correct?

22 A. Yes, I am.

23 Q. All right. Can you state where you are admitted to
24 practice law?

25 A. I'm admitted Pennsylvania, New Jersey and Florida.

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2 Q. Okay. Can you briefly give your law school and college
3 background?

4 A. I graduated Penn State 1964, oh my goodness. And
5 Villanova Law School, 1967. I passed the Pennsylvania bar in
6 1967.

7 THE COURT: So I'm saying but I was in his class at
8 Penn State. Do I have to refuse -- there were, like, millions
9 of people on campus. But I disclose it.

10 Q. And you currently own a law practice, Mr. Udren?

11 A. Yes, I do. Udren Law Offices, P.C.

12 Q. All right. And your position with that firm?

13 A. I'm the president of that company.

14 Q. Are you the sole shareholder?

15 A. Yes, I am.

16 Q. All right. Can you discuss for the Court and provide the
17 Court with an outline of the business conducted by the Udren
18 Law Offices?

19 A. We specialize in representation of lenders. We do
20 foreclosures, bankruptcies in that context. We do REO,
21 ejectments, anything that the lender requires with regard to
22 residential mortgage lending.

23 Q. Okay. And the source of your business generally is from
24 what --

25 A. It's from the really the names that you see in the

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2 newspapers even today. It's been the Well Fargos, Saxons,
3 HSBC. You know, we probably represent fifty different lenders
4 out there, maybe more.

5 Q. Okay. And do you represent servicers as well?

6 A. Servicers, yes.

7 Q. All right. Now, do you have dealings with Fidelity
8 National Foreclosure Solutions, Inc.?

9 A. Yes, we do.

10 Q. Okay. What is -- to your understanding, what is that
11 entity of what we've heard a presentation today?

12 A. Well, not to belabor it. I mean, the presentation is was
13 what it was. I mean, we use their services to interact with
14 our clients. We use the NewTrak system and we found it very
15 beneficial. We liked it.

16 Q. All right. And how does the Fidelity assist the conduct
17 of your clients.

18 A. Well, the demonstration we saw today is really -- you
19 know, I go back to -- I miss the click clack of the IBM
20 Selectra Typewriter. So, I mean, that's the era that I grew
21 up in the law practice. So a lot of this is really -- I've
22 had to go kicking and screaming into accepting it. But now
23 that I have accepted it, I don't know how we could practice at
24 the current fee levels without these kinds of aids. I mean,
25 we rely on this dramatically. This allows paralegals to

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2 interact with the client through the system, get information,
3 ask for information without having to come to me and play
4 telephone tag for sometimes weeks at a time.

5 Q. So, in your opinion, the Fidelity relationship has
6 assisted you in providing information to Courts and to perform
7 the work that you do on a daily basis?

8 THE COURT: Try to have him tell me about it, not
9 you, Mr. Bart. I think it would be more helpful.

10 MR. BART: Well, I'm just basically summarizing but
11 you're right. That's --

12 THE COURT: You don't have to summarize. I --

13 MR. BART: All right. Let me --

14 THE COURT: -- listen.

15 MR. BART: Let me mark, if I will -- it's Mark Udren
16 1 because we had prior exhibits marked as Udren.

17 THE CLERK: Yes, we do. We're on 13.

18 MR. BART: All right. Why don't we go Udren 14?

19 THE WITNESS: Okay. I'm sorry. What was the
20 question now again?

21 THE COURT: Do I have a --

22 MR. BART: Your Honor, I have an extra one.

23 THE COURT: Oh, okay. Is this old stuff that's
24 being redone or something?

25 THE CLERK: No, this is --

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2 THE COURT: Oh, okay.

3 THE CLERK: Last time we had Udren 13. So --

4 THE COURT: Okay. So this is Udren 14? Okay, okay.

5 MR. BART: I don't have copies with me but --

6 THE COURT: Do you have a copy, Mr. Conway?

7 MR. CONWAY: Yes, I do. I was just pointing

8 something out to counsel.

9 THE COURT: Okay. Just because I don't need one

10 MR. BART: I'll deal with it.

11 MR. CONWAY: -- if you don't. You're more

12 important.

13 MR. BART: All right.

14 BY MR. BART:

15 Q. I'm showing you a document which has been produced in

16 these proceedings entitled "Network Agreement". It's Bates

17 stamped starting at Taylor 00316. First, is that your

18 signature at the end of the agreement, Mr. Udren?

19 A. I'm looking for it now.

20 THE COURT: Do you have a better copy than I do?

21 MR. CONWAY: No, Your Honor.

22 MR. BART: This is what was produced through the

23 pdf.

24 THE COURT: Through the what?

25 MR. BART: The production that we got via e-mail

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2 from Fidelity yesterday.

3 MR. CONWAY: It's barely legible but if you strain,

4 Your Honor, we manage --

5 THE COURT: Okay. Well, you've got younger eyes

6 than I do so if it becomes a problem maybe you'll get me --

7 BY MR. BART:

8 Q. Did you --

9 A. Yes. That is my signature, yes.

10 Q. Okay. And this agreement is dated when?

11 A. This is dated August 31st, 2001.

12 Q. Okay. And did you come to sign a subsequent agreement?

13 A. Yes, I did.

14 Q. All right. Do you know the date of the subsequent

15 agreement?

16 A. I believe the subsequent agreement was dated 2005. And

17 then there's updated exhibits that I recall that -- 2007. I

18 quickly -- all this was scanned in our office so I printed

19 what I could.

20 MR. BART: I'll mark this one but it's my only copy.

21 Q. This is the 2005 agreement?

22 MR. BART: I'll have to get you another copy.

23 MR. CONWAY: No, no. I don't care. It's a similar

24 agreement.

25 THE CLERK: Is it all one --

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2 MR. BART: Yes. It's one with exhibits.

3 THE CLERK: And I just took it off there, right?

4 MR. BART: Yes, you can.

5 BY MR. BART:

6 Q. Okay. Is that the 2005 agreement with 2007 amendments
7 that you referred to?

8 A. I believe it is, yes.

9 Q. All right. Can you locate your signature on that
10 agreement and identify it as well?

11 A. Yes, that is my signature.

12 Q. All right. Let me backtrack for a second. With respect
13 to the Udren Law Offices, can you state how many attorneys you
14 currently have working for the firm?

15 A. I believe we have nine or ten. I mean, we had some leave
16 and some come so I think it's ten.

17 Q. All right. Do you how many paralegals are employed by
18 your office?

19 A. Well, maybe a hundred.

20 Q. All right. And approximately how many other
21 administrative personnel that are employed by the Udren Law
22 Office?

23 A: Probably -- the line between processor and paralegal is
24 really --

25 Q. Okay.

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2 A. -- my problem. So there's 130 total. And with that,
3 there's processors, there's paralegals and there's
4 administrative personnel.

5 Q. All right.

6 A. I mean, I don't have the exact mix.

7 Q. Can you describe for the Court the process which occurs
8 when the Udren Law Office receives a referral of a matter
9 through the NewTrak system?

10 A. Yeah. I'll do the best I can. Understand that, as time
11 has gone by, I have really delegated a good bit of the
12 administrative process to administrative people. So that am I
13 an expert on NewTrak? No, I'm not. But I do know that the
14 referrals which used to come in little envelopes in the mail
15 now come either on NewTrak or whatever other system the
16 clients may be using. But it comes into a referral
17 department. Their sole job is to take these off of NewTrak,
18 open them up, request the documents they need, open a file.
19 We don't even have paper files now. It's all scanned; it's
20 all electronic.

21 Q. All right. And how does a matter get assigned within
22 your office once it comes --

23 THE COURT: Well, let me ask you.

24 MR. BART: Sure.

25 THE COURT: The referral department, does -- and

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2 then there's a request for the documents. You get a referral,
3 you know, this bankruptcy, you're going to do a motion for
4 relief. And who -- you just identified you have nine, ten
5 attorneys and 130 paraprofessionals. Is the referral
6 department -- how's the referral department staffed? Who's
7 acting at this point?

8 THE WITNESS: So you're asking if a bankruptcy comes
9 in, how do they know what to do with it?

10 THE COURT: Well, I'm saying you get -- you have the
11 referral department, I guess, is the one that monitors the
12 NewTrak system to see if lo and behold today you got a new
13 referral?

14 THE WITNESS: Yeah. For referrals, yes.

15 THE COURT: Okay. And then they say, fabulous, we
16 have three. And then they're going to need certain dates.

17 THE WITNESS: Right.

18 THE COURT: So who's making those judgments about
19 what needs to be secured?

20 THE WITNESS: Well, they have manuals for every
21 department. So now these people are trained; they don't need
22 to read the manual.

23 THE COURT: Well, who are the people? What are
24 their -- I mean, are they attorneys, are they paralegals, are
25 they processors, are they, you know, high school students? I

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2 mean, I'm just trying to identify how this thing is being
3 handled.

4 THE WITNESS: I guess I can only answer that by
5 saying that these are people who we've hired, who we have
6 trained to accept these referrals. They know because we have
7 trained them what documents we need.

8 THE COURT: I don't doubt that they're not well
9 trained. Still, you didn't answer my question. Let me break
10 it down. Are they attorneys?

11 THE WITNESS: No. No, they're not.

12 THE COURT: Okay. Are they paralegals?

13 THE WITNESS: I guess one of the processors. They
14 don't have certificates of paralegals, if that's what you
15 mean. No, they're not paralegals.

16 THE COURT: Okay. All right. So they're
17 processors.

18 THE WITNESS: Yeah, processors.

19 THE COURT: And what is the background and training
20 of a processor?

21 THE WITNESS: Well, the backgrounds vary. You know,
22 equal opportunities. I mean, whoever comes in and qualifies.
23 You know, we interview them. If we like them, we think they
24 have the intelligence and the work ethic, which are the two
25 things that the presiding department is required to inquire

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2 then we hire them. We hire them for specific departments.

3 And then the manager of that department begins the training

4 process. They're not put out on their own until the manager

5 of that department is satisfied they understand what they need

6 to do.

7 THE COURT: Okay. Go ahead.

8 MR. BART: All right.

9 BY MR. BART:

10 Q. I think that you should describe the background and
11 qualifications of the managers who are supervising this work.

12 A. Well, you know, it varies on the different departments.
13 Many of the managers are people that started out at one level
14 and proved to be the cream which rises to the top and got
15 promoted into positions that they have. My operations
16 manager, for example, started with me from the beginning and
17 has proven to be a most efficient and intelligent and so she
18 is the operations manager. I have a Pennsylvania foreclosure
19 manager. I have a New Jersey foreclosure manager. I have an
20 REO manager. I have a bankruptcy manager. I have a title
21 manager.

22 THE COURT: Well, let's -- maybe it would be helpful
23 if we weren't so hypothetical here and we kind of try and
24 focus the inquiry of the process -- you know, unless the
25 trustee feels otherwise -- to bankruptcy. 'Cause, quite

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2 frankly, that's what this is all about. And it might be
3 easier for Mr. Udren to answer questions. So if we're talking
4 about who's the manager of the department, maybe we're
5 thinking about the manager of the department that would get a
6 referral on a bankruptcy matter.

7 THE WITNESS: Okay.

8 Q. Can you give a name?

9 A. Yeah. The --

10 THE COURT: I don't care about the name so much as
11 that you were asked about the qualifications. So he says they
12 vary but if we focus it in a little bit, maybe it'll be easier
13 to answer.

14 A. Okay. Well, the manager of the bankruptcy department
15 worked for one of the -- I think it was GMAC for, I believe,
16 fifteen, twenty years. And she came from another lending
17 office. And we were very fortunate to get her. She's very
18 knowledgeable and very efficient, very organized. Understands
19 the process of both bankruptcy and foreclosure for that
20 matter. She was, of course, trained by the management that I
21 had in place. We were satisfied that she understood the
22 processes. She learned how to use NewTrak. She understood
23 all the processes. And now she manages probably twenty to
24 twenty-five people to see that things run smoothly.

25 THE COURT: But she's not a lawyer.

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2 THE WITNESS: No, she's not.

3 MR. BART: All right.

4 THE COURT: Okay.

5 Q. We heard from Mr. Fitzgibbon in this case. Mr.
6 Fitzgibbon was a relatively new attorney, was he not?

7 A. Yes.

8 Q. What is the firm's policy and procedures when it comes to
9 training new attorneys such as Mr. Fitzgibbon.

10 A. Well, as a preamble, we had to experience bankruptcy
11 attorneys who both left pretty much at the same time. It was
12 just a coincidence, I believe. And, you know, they each had
13 their own lives they wanted to pursue elsewhere. So we were
14 really left without the two primary bankruptcy attorneys that
15 had been performing our services for us. However, we still
16 had senior attorneys in the office, one of whom is Ms. Doyle.
17 We started a process to hire attorneys. We hired Mr.
18 Fitzgibbon. We hired actually three other attorneys one of
19 whom -- so, by way of example, Ms. Doyle came into court with
20 one of the attorneys, had to present a motion that we were
21 requested to -- and he just wasn't able to do it very well.
22 And she came back and reported and unfortunately we had to
23 terminate that attorney. He wasn't able to really perform up
24 to standards we required. She came with Mr. Fitzgibbon,
25 watched him perform on several occasions, decided that he was

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2 competent. She went through the process with him. She
3 reviewed his documents. She taught him really what he needed
4 to know. And he was not set loose on his own until she was
5 satisfied that he was able to handle it almost like a
6 preceptor concept of -- those of us who go back that far.

7 THE COURT: Ms. Doyle, that is? You're talking
8 about Ms. Doyle --

9 THE WITNESS: Ms. Doyle worked with Mr. Fitzgibbon,
10 certainly. And she's twenty, twenty-five years experience. I
11 was comfortable with her.

12 Q. All right. And you've had an opportunity to review the
13 transcripts of the May and June hearings?

14 A. Yes.

15 Q. Okay. And you were here in the proceeding where Ms.
16 Graves testified, correct?

17 A. Yes.

18 Q. And you've had an opportunity -- have you had an
19 opportunity to review the transcript of Mr. Fitzgibbon's
20 testimony?

21 A. Yes, I did -- I did look at it.

22 Q. Okay.

23 MR. BART: I don't know, Your Honor, how much you
24 want me to go through the history of what happened with Mr.
25 Udren because his is going to be second-hand in terms of the

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2 relief from stay motion and what transpired. I can have Mr.
3 Udren testify as to his opinions and testify for the firm
4 about what happened. But I want to leave that to you since
5 this is your inquiry primarily. Would you want to hear from
6 Mr. Udren as to his opinions?

7 THE COURT: Well, I don't know what his -- I mean,
8 you know what the nature of the questions that I had are. I
9 don't know how much he gets involved in the weeds of the
10 office. I know I had wanted to know how the firm was managed
11 so that I understood what kind of directives were being given
12 to attorneys. The question that has not been sufficiently
13 answered for my purposes is why -- what I have heard -- and
14 I'll put it on the table. I mean, this is not a adversarial
15 in my view. You know, why when the HSBC testifies that --
16 representative testifies that the NewTrak system has a
17 capacity for escalation in the event that information is not
18 forthcoming that would satisfy a request from the Court, why
19 Mr. Fitzgibbons believed that he was not free to utilize it.
20 And that's a firm question.

21 MR. BART: All right. May I answer that from --

22 THE COURT: And, you know -- yeah.

23 MR. BART: Okay.

24 THE COURT: You personally or him?

25 MR. BART: Well --

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2 THE COURT: You don't know because you don't work at
3 the firm.

4 MR. BART: I don't work at the firm but I was here
5 to hear Mr. Fitzgibbon's testimony of --

6 THE COURT: Well, I'm not asking for argument. I
7 heard his testimony --

8 MR. BART: Fine.

9 THE COURT: -- and for all I know, I don't know what
10 really happened or -- but you may have been there to hear his
11 testimony after he had met with you and after all this had
12 transpired. I was in court when he stood here at the bar and
13 told me he couldn't get information from the system --

14 MR. BART: All right.

15 THE COURT: -- even though he had -- you know, I
16 never heard that he improperly utilized it. He sort of
17 inferred that maybe you didn't ask for the right thing. I
18 mean, if what we're basically saying now is this is all much
19 ado about nothing because Mr. Fitzgibbon didn't properly
20 communicate then -- which is, I think, where you're kind of
21 trying to go, I was here and made things very clear to him.
22 And he made things very clear to me. And I do agree. I think
23 Mr. Fitzgibbon does a nice job and he's trained. So that has
24 still not been answered to my satisfaction.

25 MR. BART: All right. I don't know that Mr. Udren

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2 is the person --

3 THE COURT: And if he doesn't have the --

4 MR. BART: Right.

5 THE COURT: -- foggiest notion because this all --

6 MR. BART: I mean, all he could say is he's reviewed
7 the file and these are his conclusions.

8 THE COURT: Well, then the U.S. trustee examine and
9 find out what the U.S. trustee is trying to find out.

10 MR. BART: Okay.

11 THE COURT: I --

12 MR. BART: Let me ask one more.

13 THE COURT: He doesn't know anything special about
14 NewTrak. I have the -- I still don't -- well --

15 MR. BART: Well, let me just ask him --

16 BY MR. BART:

17 Q. What is the escalation policy that's been referred to?

18 A. You know, I've heard throughout this that he was unable
19 to speak to the client, that Fidelity blocks -- that's just so
20 untrue. It's just not the case. There's nobody in the
21 office. When I say nobody, there's certain processors that
22 can't call the clients for obvious reasons. But there's no
23 attorney in the office that can't pick up the phone and speak
24 to any client any time they want. Mr. Fitzgibbon,
25 unfortunately, is a young energetic attorney who's six months

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2 into this. And I think that as a young attorney -- I mean,
3 I've sort of forgiven him. It's not for me to forgive him on
4 your behalf but he misspoke. He didn't understand the
5 escalation policy. And I think he didn't really come to me or
6 Lorraine Doyle or any of the other attorneys to say hey, what
7 can I do. I'm not getting what I need. That's what he should
8 have done. That's what's in the manual. That's what he's
9 told. And I think he just --

10 THE COURT: What manual?

11 THE WITNESS: We have manuals, procedure manuals,
12 for every department for every county in the state, how
13 everything is -- 'cause sixty-seven counties, everybody does
14 everything different.

15 THE COURT: So if I were to ask you for your manual
16 that he had accessible --

17 THE WITNESS: I'm sure.

18 THE COURT: -- that tells him when you can't get a
19 loan history and it comes back and it's different than the
20 Court is requesting that you can pick up the phone and call --
21 a young attorney can pick up and call the client.

22 THE WITNESS: Your Honor, I think he misunderstood
23 what you were asking. He didn't purposely not give you what
24 you wanted. I mean, he wouldn't do that. None of us would do
25 that.

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2 THE COURT: I know that.

3 THE WITNESS: He would give you what you wanted. I
4 mean, he misunderstood --

5 THE COURT: He would give me --

6 THE WITNESS: -- what he was asking for. They
7 misunderstood what he was asking for. You know, when it got
8 confused enough for him to come to me or any of the other
9 attorneys to ask for help --

10 THE COURT: Well, you're --

11 THE COURT: I wish he had. He's supposed to. And
12 he knows that now. But it's an act of omission not
13 commission.

14 THE COURT: I believe you. I do not have any
15 adverse views about Mr. Fitzgibbon. You know, this is not
16 about Mr. Fitzgibbon. This is about when attorneys stand up
17 in this Court and they've been asked to provide loan histories
18 and they can't get it. And it's not just -- if it was one
19 young attorney who was having a problem that would be one
20 thing. We wouldn't have done all this if it was one young
21 attorney who didn't know that he could do this. But I have
22 attorneys that stand here week after week and can't get loan
23 histories. I've just sat through an hour and a half of this
24 system which is telling me that they should be able to get it
25 not in thirty days, which is the time your attorneys always